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9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12  
13 Federal Trade Commission,  
14 Plaintiff,

15 vs.

16 ELH Consulting, LLC, an Arizona Limited  
Liability Company, also d/b/a Proactive  
17 Planning Solutions; Purchase Power Solutions,  
LLC, an Arizona Limited Liability Company;  
18 Allied Corporate Connection, LLC, an Arizona  
Limited Liability Company; Complete  
19 Financial Strategies, LLC, an Arizona Limited  
Liability Company; 3Point14 Consultants,  
20 LLC, a Nevada Limited Liability Company,  
also d/b/a Elite Planning Group; Key Tech  
21 Software Solutions, LLC, a Delaware Limited  
Liability Company, also d/b/a Key One  
22 Solutions;

23 Emory L. Holley IV, a/k/a Jack Holley,  
individually and as the sole member of ELH  
24 Consulting, LLC; Lisa Miller, individually and  
as the sole member of Allied Corporate  
25 Connection, LLC, Complete Financial  
Strategies, LLC, and Purchase Power  
26 Solutions, LLC; Rares Stelea, individually and  
as the sole member of 3Point14 Consultants,  
27 LLC; and Justin Journey, individually and as  
the sole member of Key Tech Software  
28 Solutions, LLC,

Defendants.

Civil No. CV-12-2246-PHX-FJM

**COMPLAINT FOR  
PERMANENT INJUNCTION  
AND OTHER EQUITABLE  
RELIEF**

1 Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

2 1. The FTC brings this action under Sections 13(b) and 19 of the  
3 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the  
4 Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing  
5 Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent  
6 injunctive relief, rescission or reformation of contracts, restitution, the refund of  
7 monies paid, disgorgement of ill-gotten monies, and other equitable relief for  
8 Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15  
9 U.S.C. § 45(a), and in violation of the FTC's Trade Regulation Rule entitled  
10 "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

11 **JURISDICTION AND VENUE**

12 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
13 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and  
14 6105(b).

15 3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c),  
16 and 15 U.S.C. § 53(b).

17 **PLAINTIFF**

18 4. The FTC is an independent agency of the United States Government  
19 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC  
20 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or  
21 affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C.  
22 §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and  
23 enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive  
24 telemarketing acts or practices.

25 5. The FTC is authorized to initiate federal district court proceedings,  
26 by its own attorneys, to enjoin violations of the FTC Act and the TSR and to  
27 secure such equitable relief as may be appropriate in each case, including  
28

1 rescission or reformation of contracts, restitution, the refund of monies paid, and  
2 the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A),  
3 56(a)(2)(B), 57b, 6102(c) and 6105(b).

4 **DEFENDANTS**

5 6. ELH Consulting, LLC ("ELH Consulting"), is an Arizona limited  
6 liability company with its mailing address at 1753 E. Broadway Rd. #525, Tempe,  
7 Arizona 85282, and its offices at 2655 W. Guadalupe Rd., Ste. 9, Mesa, Arizona  
8 85202. ELH Consulting has done business as Proactive Planning Solutions  
9 ("Proactive"). ELH Consulting transacts or has transacted business in this district  
10 and throughout the United States.

11 7. Purchase Power Solutions, LLC ("Purchase Power"), is an Arizona  
12 limited liability company with its registered address at 4050 W. Ray Rd. #17-155,  
13 Chandler, Arizona 85226, and its mailing address at 3116 S. Mill St. # 283, Mesa,  
14 Arizona 85282. Purchase Power transacts or has transacted business in this district  
15 and throughout the United States.

16 8. Allied Corporate Connection, LLC ("Allied"), is an Arizona limited  
17 liability company with its mailing address at 2023 W. Guadalupe Rd. #11-217,  
18 Mesa, Arizona 85202, and its offices at 2655 W. Guadalupe Rd., Ste. 9, Mesa,  
19 Arizona 85202. Allied transacts or has transacted business in this district and  
20 throughout the United States.

21 9. Complete Financial Strategies, LLC ("Complete"), is an Arizona  
22 limited liability company with its registered address at 1730 E. Warner Rd. # 10-  
23 109, Tempe, Arizona 85284. Complete transacts or has transacted business in this  
24 district and throughout the United States.

25 10. 3Point14 Consultants, LLC ("3Point"), is a Nevada limited liability  
26 company with its registered address at 6576 Goldensun Court, Las Vegas, Nevada  
27 89108, and its mailing address at 1960 W. Ray Rd. #13-17, Chandler, Arizona  
28

1 85224. 3Point has done business as Elite Planning Group ("Elite"), which has its  
2 mailing address at 315 W. Elliot Rd. #107-166, Tempe, Arizona 85284. 3Point  
3 transacts or has transacted business in this district and throughout the United  
4 States.

5 11. Key Tech Software Solutions, LLC, ("Key Tech") is a Delaware  
6 limited liability company with its registered address at 16192 Coastal Highway,  
7 Lewes, Delaware 19958, and its mailing address at P.O. Box 360321, Strongsville,  
8 Ohio 44136. Key Tech has done business as Key One Solutions ("Key One"),  
9 which has its mailing address at 7650 S. McClintock Dr. #103-119, Tempe,  
10 Arizona 85284. Key Tech transacts or has transacted business in this district and  
11 throughout the United States.

12 12. Emory L. Holley IV a/k/a Jack Holley ("Holley") is the sole member  
13 of Defendant ELH Consulting and is general manager of Defendant Allied. At all  
14 times material to this Complaint, acting alone or in concert with others, he has  
15 formulated, directed, controlled, had the authority to control, or participated in the  
16 acts and practices set forth in this Complaint. Holley resides in this district and, in  
17 connection with the matters alleged herein, transacts or has transacted business in  
18 this district and throughout the United States.

19 13. Lisa Miller ("Miller") is the sole member of Defendants Allied,  
20 Complete, and Purchase Power. Miller has been permanently enjoined in  
21 connection with FTC v. Vector Direct Marketing, et al., CV04 0095 PHX SMM  
22 (Stip. Final Order entered 06/20/04) from any violation of the TSR. At all times  
23 material to this Complaint, acting alone or in concert with others, she has  
24 formulated, directed, controlled, had the authority to control, or participated in the  
25 acts and practices set forth in this Complaint. Miller resides in this district and, in  
26 connection with the matters alleged herein, transacts or has transacted business in  
27 this district and throughout the United States.

14. Rares Stelea (“Stelea”) is the sole member of Defendant 3Point. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Stelea resides in Las Vegas, Nevada. In connection with the matters alleged herein, he transacts or has transacted business in this district and throughout the United States.

15. Justin Journey (Journey”) is the sole member of Defendant Key Tech. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Journey resides in Strongsville, Ohio. In connection with the matters alleged herein, he transacts or has transacted business in this district and throughout the United States.

16. Defendants ELH Consulting, on its own behalf and also d/b/a Proactive, Purchase Power, Allied, and Complete have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. These Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations, and that have commingled funds and engaged in a common scheme. Because these Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Holley and Miller have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Defendants that constitute the common enterprise.

## COMMERCE

17. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

**DEFENDANTS' BUSINESS PRACTICES**

18. The Defendants operate a tangled network of telemarketing companies and telemarketing service providers that have been active under various names at several locations since at least 2007. ELH Consulting, LLC; Purchase Power Solutions, LLC; Allied Corporate Connection, LLC; and Complete Financial Strategies, LLC; are owned and controlled by Lisa Miller and/or Emory Holley. Miller and Holley through these entities both deceptively telemarket credit card interest rate reduction services and provide substantial assistance to third parties who deceptively telemarket such services. Defendants 3point14 Consultants, LLC, owned by Rares Stelea, and Key Tech Software Solutions, LLC, owned by Justin Journey, are two telemarketing companies that have been or are currently being assisted by Miller and Holley.

19. Since at least December 2007, Defendants ELH Consulting, Purchase Power, Allied, Complete, Holley, and Miller have telemarketed credit card interest rate reduction services to consumers nationwide in the United States.

20. Since at least March 2011, Defendant 3Point has telemarketed credit card interest rate reduction services to consumers nationwide in the United States.

21. Since at least January 2012, Defendant Key Tech has telemarketed credit card interest rate reduction services to consumers nationwide in the United States.

22. In many instances, Defendants initiate telemarketing calls using a telemarketing service that delivers prerecorded voice messages, known as "voice broadcasting" or "robocalling." The prerecorded messages offer consumers the purported opportunity to secure substantially lower credit card interest rates and instruct consumers to press a number on their phone to be connected to a live representative. When consumers press the number, they are connected to a live representative who works for Defendants.

1           23. Defendants also have marketed their programs via the Internet on  
2 several websites, including keyonesolutionsinc.com,  
3 proactiveplanningsolutions.com, theeliteplanninggroup.com, and  
4 purchasepowersolutionsinc.com.

5           24. During telemarketing calls, Defendants often identify themselves as  
6 representatives of "Cardholder Services" or some other generic business name.  
7 Defendants claim to have the ability to reduce substantially consumers' credit card  
8 interest rates. In many instances, Defendants claim that they can obtain very low  
9 interest rates, typically between 4.9% and 9.9% for consumers. Defendants also  
10 often claim that their interest rate reduction services will provide substantial  
11 savings to consumers, typically at least \$2500, in a short period of time, and will  
12 enable consumers to pay off their debt much faster, typically three to five times  
13 faster, without increasing their monthly payments.

14           25. In numerous instances, Defendants guarantee that if consumers do  
15 not save the promised amount of money in a short time as a result of lowered  
16 credit card interest rates, consumers will receive a full refund of the cost of  
17 Defendants' services.

18           26. In some instances, Defendants have guaranteed or represented a high  
19 likelihood of success in obtaining for consumers a 0% or very low interest credit  
20 card.

21           27. Defendants charge consumers a fee ranging from \$500 to \$999 for  
22 their services. Defendants typically place this charge on consumers' credit cards  
23 during or immediately following the telemarketing calls. Defendants typically  
24 represent that the amount of the fee will be quickly offset by savings achieved  
25 through reduced interest rates.

26           28. After consumers pay Defendants' fee, Defendants usually send  
27 consumers forms to complete and return listing all of the consumers' credit card  
28



1 account information and other sensitive personal information such as date of birth  
2 and Social Security Number.

3 29. In some instances, after consumers complete and return Defendants'  
4 forms, Defendants initiate three-way telephone calls with the consumers and the  
5 customer service departments of credit card companies that consumers listed on  
6 the forms. These three-way telephone calls merely consist of Defendants verbally  
7 requesting (or prompting consumers to verbally request) that the credit card  
8 companies reduce the consumers' credit card interest rates. This is a task  
9 consumers could easily perform themselves. The credit card companies typically  
10 decline the request, and the call ends. These three-way telephone calls are often  
11 the total extent of Defendants' credit card interest rate reduction services.

12 30. In numerous instances, Defendants fail to provide consumers with  
13 the significant reductions in credit card interest rates, new lower interest rate credit  
14 accounts, and minimum savings that were promised during the initial telephone  
15 calls, and they typically fail to provide any reduction in consumers' credit card  
16 interest rates at all. Consequently, consumers are not able to pay their credit card  
17 debts faster than they could have without Defendants' service.

18 31. Despite Defendants' failure to deliver on the promises made to  
19 consumers, Defendants rarely refund the fee charged to consumers for purchasing  
20 Defendants' credit card interest rate reduction services.

21 32. While telemarketing their program, Defendants, acting directly or  
22 through one or more intermediaries, have made numerous calls to telephone  
23 numbers on the National Do Not Call Registry ("Registry"), as well as to  
24 consumers who have previously asked Defendants not to call them again. In some  
25 instances, Defendants or their telemarketers also "spoof" their calls by transmitting  
26 phony Caller Identification information so that call recipients do not know the  
27 source of the calls.



1           33. In numerous instances, Defendants, acting directly or through one or  
2 more intermediaries, have initiated telemarketing calls that failed to disclose  
3 truthfully, promptly, and in a clear and conspicuous manner to the person receiving  
4 the call: the identity of the seller; that the purpose of the call is to sell goods or  
5 services; or the nature of the goods or services. In numerous instances since  
6 December 1, 2008, Defendants, acting directly or through one or more  
7 intermediaries, have initiated prerecorded telemarketing calls to consumers that  
8 failed to promptly make such disclosures, or to immediately thereafter disclose the  
9 mechanism for asserting a Do Not Call request.

10           34. In numerous instances on or after September 1, 2009, Defendants,  
11 acting directly or through one or more intermediaries, made outbound prerecorded  
12 calls that delivered messages to induce the sale of goods or services when the  
13 persons to whom these telephone calls were made had not expressly agreed, in  
14 writing, to authorize the seller to place prerecorded calls to such persons.

15           35. Defendants have called telephone numbers in various area codes  
16 without first paying the annual fee for access to the telephone numbers within such  
17 area codes that are included in the National Do Not Call Registry.

18           36. Since at least September 2007, Defendants ELH Consulting,  
19 Purchase Power, Allied, Complete, Holley, and Miller have provided substantial  
20 assistance to Defendants 3Point and Key Tech and other telemarketers and sellers  
21 of credit card interest rate reduction services including, but not limited to,  
22 registration of website domains, establishment of mail drops, product fulfillment,  
23 and customer service.

#### 24                           **VIOLATIONS OF THE FTC ACT**

25           37. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or  
26 deceptive acts or practices in or affecting commerce.”

27           38. Misrepresentations or deceptive omissions of material fact constitute  
28

1 deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C.  
2 § 45(a).

3 **COUNT ONE**

4 **Misrepresentations in Violation of Section 5**

5 39. In numerous instances, in connection with the advertising,  
6 marketing, promotion, offering for sale, or sale of credit card interest rate  
7 reduction services, Defendants have represented, directly or indirectly, expressly or  
8 by implication, that:

9 A. Consumers who purchase Defendants' credit card interest rate  
10 reduction services will receive a 0% or low rate credit card or have their  
11 credit card interest rates reduced substantially, including to as low as 4.9%  
12 to 9.9%;

13 B. Consumers who purchase Defendants' credit card interest rate  
14 reduction services will save thousands of dollars in a short time as a result  
15 of lowered credit card interest rates; and

16 C. Consumers who purchase Defendants' credit card interest rate  
17 reduction services will be able to pay off their debts much faster, typically  
18 three to five times faster, as a result of lowered credit card interest rates.

19 40. In truth and in fact, the representations set forth in Paragraph 39 of  
20 this Complaint were false or not substantiated at the time the representations were  
21 made.

22 41. Therefore, Defendants' representations as set forth in Paragraph 39  
23 of this Complaint are false or misleading and constitute deceptive acts or practices  
24 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25 **COUNT TWO**

26 **Refund Misrepresentations**

27 42. In numerous instances, in connection with the advertising,  
28

1 marketing, promotion, offering for sale, or sale of credit card interest rate  
2 reduction services, Defendants have represented, directly or indirectly, expressly or  
3 by implication, that Defendants will provide full refunds if consumers do not save  
4 thousands of dollars in a short time as a result of lowered credit card interest rates.

5 43. In truth and in fact, in numerous instances in which Defendants have  
6 made the representation set forth in Paragraph 42 of this Complaint, Defendants do  
7 not provide full refunds when consumers do not save thousands of dollars in a  
8 short time as a result of lowered credit card interest rates.

9 44. Therefore, Defendants' representation as set forth in Paragraph 42 of  
10 this Complaint is false and misleading and constitutes a deceptive act or practice in  
11 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 **THE TELEMARKETING SALES RULE**

13 45. Congress directed the FTC to prescribe rules prohibiting abusive and  
14 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15  
15 U.S.C. §§ 6101-6108. The FTC adopted the original Telemarketing Sales Rule in  
16 1995, extensively amended it in 2003, and amended certain provisions thereafter.  
17 16 C.F.R. Part 310.

18 46. As amended, effective September 27, 2010, and October 27, 2010,  
19 the TSR addresses the telemarketing of debt relief services. The amendments  
20 effective September 27, 2010, among other things, prohibit misrepresentations  
21 about material aspects of debt relief services. The amendments effective October  
22 27, 2010, prohibit sellers and telemarketers from charging or collecting an advance  
23 fee before renegotiating, settling, reducing, or otherwise altering consumers' debts.

24 47. Defendants are "seller[s]" and/or "telemarketer[s]" engaged in  
25 "telemarketing," and Defendants have initiated, or have caused telemarketers to  
26 initiate, "outbound telephone call[s]" to consumers to induce the purchase of  
27 goods or services, as those terms are defined in the TSR, 16 C.F.R. § 310.2(v),  
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1 (aa), (cc), and (dd). Defendants also are sellers or telemarketers of “debt relief  
2 service[s],” as defined by the TSR, 16 C.F.R. § 310.2(m).

3 48. Under the TSR, an “outbound telephone call” means a telephone call  
4 initiated by a telemarketer to induce the purchase of goods or services or to solicit  
5 a charitable contribution. 16 C.F.R. § 310.2(v).

6 49. The TSR prohibits sellers and telemarketers from misrepresenting,  
7 directly or by implication, in the sale of goods or services, any material aspect of  
8 the performance, efficacy, nature, or central characteristics of the goods or services  
9 that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

10 50. As amended, effective September 27, 2010, the TSR prohibits sellers  
11 and telemarketers from misrepresenting, directly or by implication, in the sale of  
12 goods or services, any material aspect of any debt relief service. 16 C.F.R.  
13 § 310.3(a)(2)(x).

14 51. The TSR prohibits sellers and telemarketers from misrepresenting,  
15 directly or by implication, in the sale of goods or services, any material aspect of  
16 the nature or terms of the seller’s refund, cancellation, exchange, or repurchase  
17 policies. 16 C.F.R. § 310.3(a)(2)(iv).

18 52. The TSR prohibits sellers and telemarketers from requesting or  
19 receiving payment of any fee or consideration in advance of obtaining a loan or  
20 other extension of credit when the seller or telemarketer has guaranteed or  
21 represented a high likelihood of success in obtaining or arranging a loan or other  
22 extension of credit for a person. 16 C.F.R. § 310.4(a)(4).

23 53. As amended, effective October 27, 2010, the TSR prohibits sellers  
24 and telemarketers from requesting or receiving payment of any fee or  
25 consideration for any debt relief service until and unless:

26 A. The seller or telemarketer has renegotiated, settled, reduced,  
27 or otherwise altered the terms of at least one debt pursuant to a settlement  
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1 agreement, debt management plan, or other such valid contractual  
2 agreement executed by the customer;

3 B. The consumer has made at least one payment pursuant to that  
4 settlement agreement, debt management plan, or other valid contractual  
5 agreement between the customer and the creditor or debt collector; and

6 C. To the extent that debts enrolled in a service are renegotiated,  
7 settled, reduced, or otherwise altered individually, the fee or consideration  
8 either (1) bears the same proportional relationship to the total fee for  
9 renegotiating, settling, reducing, or altering the terms of the entire debt  
10 balance as the individual debt amount bears to the entire debt amount; or (2)  
11 is a percentage of the amount saved as a result of the renegotiation,  
12 settlement, reduction, or alteration.

13 16 C.F.R. § 310.4(a)(5)(i).

14 54. The TSR, as amended in 2003, established a “do-not-call” registry  
15 (the “National Do Not Call Registry” or “Registry”), maintained by the FTC, of  
16 consumers who do not wish to receive certain types of telemarketing calls.  
17 Consumers can register their telephone numbers on the Registry without charge  
18 either through a toll-free telephone call or over the Internet at [www.donotcall.gov](http://www.donotcall.gov).

19 55. Consumers who receive telemarketing calls to their registered  
20 numbers can complain of Registry violations the same way they registered,  
21 through a toll-free telephone call or over the Internet at [www.donotcall.gov](http://www.donotcall.gov), or by  
22 otherwise contacting law enforcement authorities.

23 56. The FTC allows sellers, telemarketers, and other permitted  
24 organizations to access the Registry over the Internet at  
25 [www.telemarketing.donotcall.gov](http://www.telemarketing.donotcall.gov), to pay any required fee(s), and to download the  
26 numbers not to call.

27 57. The TSR prohibits sellers and telemarketers from calling any  
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1 telephone number within a given area code unless the seller on whose behalf the  
2 call is made has paid the annual fee for access to the telephone numbers within that  
3 area code that are included in the Registry. 16 C.F.R. § 310.8.

4 58. The TSR prohibits sellers and telemarketers from initiating an  
5 outbound telephone call to telephone numbers on the Registry. 16 C.F.R.  
6 § 310.4(b)(1)(iii)(B).

7 59. The TSR prohibits sellers and telemarketers from initiating an  
8 outbound telephone call to any person when that person previously has stated that  
9 he or she does not wish to receive an outbound telephone call made by or on behalf  
10 of the seller whose goods or services are being offered. 16 C.F.R.  
11 § 310.4(b)(1)(iii)(A).

12 60. The TSR requires that sellers and telemarketers transmit or cause to  
13 be transmitted the telephone number and, when made available by the  
14 telemarketer's carrier, the name of the telemarketer, to any caller identification  
15 service in use by a recipient of a telemarketing call, or transmit the customer  
16 service number of the seller on whose behalf the call is made and, when made  
17 available by the telemarketer's seller, the name of the seller. 16 C.F.R.  
18 § 310.4(a)(8).

19 61. The TSR requires telemarketers in an outbound telephone call to  
20 disclose truthfully, promptly, and in a clear and conspicuous manner, the following  
21 information:

- 22 A. The identity of the seller;  
23 B. That the purpose of the call is to sell goods or services; and  
24 C. The nature of the goods or services.  
25 16 C.F.R. § 310.4(d).

26 62. As amended, effective December 1, 2008, the TSR prohibits a  
27 telemarketer from engaging, and a seller from causing a telemarketer to engage, in  
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1 initiating an outbound telephone call that delivers a prerecorded message to induce  
2 the purchase of any good or service unless the message promptly discloses:

- 3 A. The identity of the seller;
- 4 B. That the purpose of the call is to sell goods or services; and
- 5 C. The nature of the goods or services.

6 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

7 63. As amended, effective September 1, 2009, the TSR prohibits  
8 initiating a telephone call that delivers a prerecorded message to induce the  
9 purchase of any good or service unless the seller has obtained from the recipient of  
10 the call an express agreement, in writing, that evidences the willingness of the  
11 recipient of the call to receive calls that deliver prerecorded messages by or on  
12 behalf of a specific seller. The express agreement must include the recipient's  
13 telephone number and signature, must be obtained after a clear and conspicuous  
14 disclosure that the purpose of the agreement is to authorize the seller to place  
15 prerecorded calls to such person, and must be obtained after a clear and  
16 conspicuous disclosure that the purpose of the agreement is to authorize the seller  
17 to place prerecorded calls to such person, and must be obtained without requiring,  
18 directly or indirectly, that the agreement be executed as a condition of purchasing  
19 any good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).

20 64. Under the TSR, it is a deceptive telemarketing act or practice for a  
21 person to provide substantial assistance or support to any seller or telemarketer  
22 when that person knows or consciously avoids knowing that the seller or  
23 telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d) or  
24 § 310.4. 16 C.F.R. § 310.3(b).

25 65. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.  
26 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation  
27 of the TSR constitutes an unfair or deceptive act or practice in or affecting  
28



1 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

3 **COUNT THREE**

4 **Misrepresentations in Violation of the TSR**

5 66. In numerous instances, in connection with the telemarketing of  
6 goods and services, Defendants have misrepresented, directly or by implication,  
7 material aspects of the performance, efficacy, nature, or central characteristics of  
8 such goods and services, including, but not limited to, that:

9 A. Consumers who purchase Defendants' credit card interest rate  
10 reduction services will receive a 0% or low rate credit card or have their  
11 credit card interest rates reduced substantially, including to as low as 4.9%  
12 to 9.9%;

13 B. Consumers who purchase Defendants' credit card interest rate  
14 reduction services will save thousands of dollars in a short time as a result  
15 of lowered credit card interest rates; and

16 C. Consumers who purchase Defendants' credit card interest rate  
17 reduction services will be able to pay off their debts much faster, typically  
18 three to five times faster, as a result of lowered credit card interest rates.

19 67. Defendants' acts and practices, as described in Paragraph 66 above,  
20 are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R.  
21 § 310.3(a)(2)(iii).

22 **COUNT FOUR**

23 **Misrepresentations of Debt Relief Services in Violation of the TSR**

24 68. In numerous instances on or after September 27, 2010, in connection  
25 with the telemarketing of debt relief services, Defendants have misrepresented,  
26 directly or by implication, material aspects of the debt relief services, including,  
27 but not limited to, that:

A. Consumers who purchase Defendants' credit card interest rate reduction services will receive a 0% or low rate credit card or have their credit card interest rates reduced substantially, including to as low as 4.9% to 9.9%;

B. Consumers who purchase Defendants' credit card interest rate reduction services will save thousands of dollars in a short time as a result of lowered credit card interest rates; and

C. Consumers who purchase Defendants' credit card interest rate reduction services will be able to pay off their debts much faster, typically three to five times faster, as a result of lowered credit card interest rates.

69. Defendants' acts and practices, as described in Paragraph 68 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(x).

## COUNT FIVE

## Refund Misrepresentations in Violation of the TSR

70. In numerous instances, in the course of telemarketing goods and services, Defendants have misrepresented, directly or by implication, that Defendants will provide full refunds if consumers do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

71. Defendants' acts and practices, as described in Paragraph 70 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

**COUNT SIX**

### Advance Fee for New Lower Interest Rate Credit Card

72. In numerous instances, in the course of telemarketing goods and services, Defendants have requested or received payment of a fee or consideration in advance of consumers obtaining an extension of credit when Defendants have

1 guaranteed or represented a high likelihood of success in obtaining or arranging an  
2 extension of credit for such consumers.

3 73. Defendants' acts and practices, as described in Paragraph 72 above,  
4 are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R.  
5 § 310.4(a)(4).

6 **COUNT SEVEN**

7 **Charging or Receiving a Fee in Advance of Providing Debt Relief Services**

8 74. In numerous instances on or after October 27, 2010, in the course of  
9 telemarketing debt relief services, Defendants have requested or received payment  
10 of a fee or consideration for a debt relief service before (a) they have renegotiated,  
11 settled, reduced, or otherwise altered the terms of at least one debt pursuant to a  
12 settlement agreement, debt management plan, or other such valid contractual  
13 agreement executed by the customer; and (b) the customer has made at least one  
14 payment pursuant to that agreement.

15 75. Defendants' acts and practices, as described in Paragraph 74 above,  
16 are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R.  
17 § 310.4(a)(5)(i).

18 **COUNT EIGHT**

19 **Violating the National Do Not Call Registry**

20 76. In numerous instances, in connection with telemarketing, Defendants  
21 have engaged, or caused a telemarketer to engage, in initiating an outbound  
22 telephone call to a person's telephone number on the National Do Not Call  
23 Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

24 **COUNT NINE**

25 **Failing to Honor Do Not Call Requests**

26 77. In numerous instances, in connection with telemarketing, Defendants  
27 have engaged, or caused a telemarketer to engage, in initiating an outbound  
28

1 telephone call to a person who previously has stated that he or she does not wish to  
2 receive an outbound telephone call made by or on behalf of Defendants, in  
3 violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

#### 4 **COUNT TEN**

##### 5 **Failing to Transmit Caller Identification**

6 78. In numerous instances, in connection with telemarketing, Defendants  
7 have failed to transmit, or cause to be transmitted, the telephone number and name  
8 of the telemarketer or of Defendants to any caller identification service in use by a  
9 recipient of a telemarketing call, in violation of the TSR, 16 C.F.R. § 310.4(a)(8).

#### 10 **COUNT ELEVEN**

##### 11 **Initiating Unlawful Prerecorded Messages On or After September 1, 2009**

12 79. In numerous instances on or after September 1, 2009, Defendants  
13 have made, or caused others to make, outbound telephone calls that delivered  
14 prerecorded messages to induce the purchase of goods or services in violation of  
15 the TSR, 16 C.F.R. § 310.4(b)(1)(v).

#### 16 **COUNT TWELVE**

##### 17 **Failing to Make Required Oral Disclosures**

18 80. In numerous instances, including on or after December 1, 2008, in  
19 the course of telemarketing goods and services, Defendants have made, or caused  
20 others to make, outbound telephone calls that deliver a prerecorded message in  
21 which the telemarketer or message failed to disclose truthfully, promptly, and in a  
22 clear and conspicuous manner to the person receiving the call:

- 23 A. The identity of the seller;
- 24 B. That the purpose of the call is to sell goods or services; and
- 25 C. The nature of the goods or services.

26 81. Defendants' acts and practices, as described in Paragraph 80 above,  
27 are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R.

1 §§ 310.4(b)(1)(v)(B)(ii) and (d).

2 **COUNT THIRTEEN**

3 **Failing to Pay National Registry Fees**

4 82. In numerous instances, in connection with telemarketing, Defendants  
 5 have initiated, or caused others to initiate, an outbound telephone call to a  
 6 telephone number within a given area code when Defendants had not, either  
 7 directly or through another person, paid the required annual fee for access to the  
 8 telephone numbers within that area code that are included in the National Do Not  
 9 Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

10 **COUNT FOURTEEN**

11 **Substantial Assistance**

12 83. Defendants ELH Consulting, Purchase Power, Allied, Complete,  
 13 Holley, and Miller have provided substantial assistance or support including, but  
 14 not limited to, registering website domain names, establishing mail drops, and  
 15 providing fulfillment and customer service, to Defendants 3Point and Key Tech  
 16 and other sellers or telemarketers, when they knew or consciously avoided  
 17 knowing that 3Point, Key Tech, and other sellers or telemarketers were engaged in  
 18 acts and practices that violate §§310.3(a), (c), or (d), or §310.4 of the TSR.

19 84. Defendants ELH Consulting, Purchase Power, Allied, Complete,  
 20 Holley, and Miller's substantial assistance, as described in Paragraph 83 above, is  
 21 a deceptive telemarketing act or practice that violates the TSR, 16 C.F.R.  
 22 §310.3(b).

23 **CONSUMER INJURY**

24 85. Consumers have suffered and will continue to suffer substantial  
 25 injury as a result of Defendants' violations of the FTC Act and the TSR. In  
 26 addition, Defendants have been unjustly enriched as a result of their unlawful acts  
 27 or practices. Absent injunctive relief by this Court, Defendants are likely to  
 28

1 continue to injure consumers, reap unjust enrichment, and harm the public interest.

2 **THIS COURT'S POWER TO GRANT RELIEF**

3 86. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this  
4 Court to grant injunctive and such other relief as the Court may deem appropriate  
5 to halt and redress violations of any provision of law enforced by the FTC. The  
6 Court, in the exercise of its equitable jurisdiction, may award ancillary relief,  
7 including rescission or reformation of contracts, restitution, the refund of monies  
8 paid, and the disgorgement of ill-gotten monies, to prevent and remedy any  
9 violation of any provision of law enforced by the FTC.

10 87. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the  
11 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief  
12 as the Court finds necessary to redress injury to consumers resulting from  
13 Defendants' violations of the TSR, including the rescission or reformation of  
14 contracts, and the refund of money.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the  
17 FTC Act, 15 U.S.C. § 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15  
18 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

19 A. Award Plaintiff such preliminary injunctive and ancillary relief as  
20 may be necessary to avert the likelihood of consumer injury during the pendency  
21 of this action and to preserve the possibility of effective final relief, including, but  
22 not limited to, temporary and preliminary injunctions, an order freezing assets,  
23 immediate access, and the appointment of a receiver;

24 B. Enter a permanent injunction to prevent future violations of the FTC  
25 Act and the TSR by Defendants;

26 C. Award such relief as the Court finds necessary to redress injury to  
27 consumers resulting from Defendants' violations of the FTC Act and the TSR,  
28

1 including, but not limited to, rescission or reformation of contracts, restitution, the  
2 refund of monies paid, and the disgorgement of ill-gotten monies; and

3 D. Award Plaintiff the costs of bringing this action, as well as such  
4 other and additional relief as the Court may determine to be just and proper.  
5

6 Respectfully Submitted,

7 WILLARD K. TOM  
8 General Counsel  
9 ROBERT J. SCHROEDER  
Regional Director

10 Dated: 10/17/12

  
11 ELEANOR DURHAM  
12 LAURA M. SOLIS

13 Attorneys for Plaintiff  
14 FEDERAL TRADE COMMISSION  
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